

AMENDED IN ASSEMBLY MARCH 23, 2006

AMENDED IN ASSEMBLY JANUARY 4, 2006

AMENDED IN ASSEMBLY JUNE 21, 2005

SENATE BILL

No. 201

Introduced by Senator Simitian

(Principal coauthor: Senator Maldonado)

(Principal coauthor: Assembly Member Parra)

(Coauthors: Assembly Members Baca, Berg, Bermudez, Pavley, and Saldana)

February 10, 2005

An act to amend ~~Section~~ Sections 15400, 15405, 15406, 15406.5, and 15409 of, and to add Sections 54.5 and 15008 to, the Fish and Game Code, and to amend Section 30411 of the Public Resources Code, relating to aquaculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 201, as amended, Simitian. Marine finfish aquaculture: *leases*.

(1) Existing law authorizes the Fish and Game Commission to lease state water bottoms to any person for aquaculture, and authorizes the commission to adopt regulations governing the terms of the leases. Existing law prohibits state water bottoms from being leased, unless the commission determines that the lease is in the public interest.

This bill would prohibit a person from engaging in marine finfish aquaculture, as defined, *in state waters* without a lease from the commission. The bill would require leases and regulations adopted by the commission for marine finfish aquaculture to meet certain standards. *The bill would establish maximum initial and renewal terms for those leases.*

(2) *Existing law requires the restoration of an aquaculture lease site upon the termination of the lease.*

The bill would require the commission to require financial assurances of each lessee to ensure that restoration is performed, and would make marine finfish aquaculture lessees responsible for damage caused by their operations, as determined by the commission.

(2)

(3) The California Coastal Act requires the Department of Fish and Game, in consultation with the Aquaculture Development Committee, to prepare programmatic environmental impact reports for existing and potential commercial aquaculture operations in both coastal and inland areas of the state if certain conditions are met.

This bill would *delete that requirement from the act, and, instead, modify provisions relating to aquaculture to include that requirement.* The bill would further require that if a final programmatic environmental impact report is prepared pursuant to that requirement for coastal marine finfish aquaculture projects approved by the commission, the report ~~ensure that~~ *provide a framework for managing* marine finfish aquaculture ~~is managed~~ in a sustainable manner that adequately considers specified environmental factors.

(4) *The provisions of the bill would be known as the Sustainable Oceans Act.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2 ~~following:~~
3 ~~(a) The United States Commission on Ocean Policy recently~~
4 ~~determined that the farming of marine species is a rapidly~~
5 ~~growing domestic and international industry that could become~~
6 ~~an important source of seafood for the United States.~~
7 ~~(b) The United States Commission on Ocean Policy also~~
8 ~~determined that the growth of marine aquaculture may have~~
9 ~~impacts on the marine environment under the current regulatory~~
10 ~~regime, and that the management of marine aquaculture activities~~
11 ~~should focus on minimizing potential adverse environmental~~
12 ~~impacts, including the following: the spread of disease and~~
13 ~~parasites; contamination of and competition with wild fish~~

1 stocks; degradation of water quality, wetlands, and other natural
2 habitats; contamination from fish wastes, dead fish, uneaten food,
3 and antibiotics; harmful interactions with birds, marine
4 mammals, and wildlife; conflicts with commercial and
5 recreational activities; introduction of nonnative species; and
6 ecosystem effects from the use of fish meal.

7 (e) Marine aquaculture can also have adverse economic
8 impacts on commercial fisheries of wild fish stocks.

9 (d) The United Nations Food and Agriculture Organization
10 estimates that by 2030 more than half of the fish consumed
11 globally will be produced through aquaculture, and has issued a
12 Code of Conduct for Responsible Fisheries that calls for
13 measures to monitor and minimize adverse impacts from marine
14 aquaculture.

15 (e) In 2003, California banned the cultivation of salmon,
16 transgenic fish species, and exotic finfish species in the waters of
17 the Pacific Ocean regulated by the state, but comprehensive
18 standards do not exist to address the full range of potential
19 impacts of marine finfish aquaculture in state waters.

20 (f) Marine finfish aquaculture is a young and growing
21 industry, and many of its environmental impacts should be
22 addressed now before serious ecological damage occurs.

23 (g) Therefore, it is the intent of the state to act now to manage
24 marine finfish aquaculture in a precautionary and
25 environmentally sustainable manner.

26 *SECTION. 1. This bill shall be known, and may be cited, as*
27 *the Sustainable Oceans Act.*

28 SEC. 2. Section 54.5 is added to the Fish and Game Code, to
29 read:

30 54.5. "Marine finfish aquaculture" means the propagation,
31 cultivation, or maintenance of finfish ~~animals~~ *species* in the
32 waters of the Pacific Ocean that are regulated by this state.

33 SEC. 3. Section 15008 is added to the Fish and Game Code,
34 to read:

35 15008. (a) The department shall, in consultation with the
36 Aquaculture Development Committee, prepare programmatic
37 environmental impact reports for existing and potential
38 commercial aquaculture operations in both coastal and inland
39 areas of the state if both of the following conditions are met:

40 (1) Funds are appropriated to the department for this purpose.

(2) Matching funds are provided by the aquaculture industry. For the purpose of this section, “matching funds” include, but are not limited to, any funds expended by the aquaculture industry before January 1, 2006, for the preparation of a programmatic environmental impact report.

(b) If the final programmatic environmental impact report is prepared pursuant to subdivision (a) for coastal marine finfish aquaculture projects and approved by the commission under the California Environmental Quality Act set forth in Division 13 (commencing with Section 21000) of the Public Resources Code, ~~the report shall ensure that marine finfish aquaculture is managed~~ the report shall provide a framework for managing marine finfish aquaculture in an environmentally sustainable manner that, at a minimum, adequately considers all of the following factors:

(1) Appropriate areas for siting marine finfish aquaculture operations to avoid ~~impacts~~ adverse impacts, and minimize any unavoidable impacts, on user groups, public trust values, and the marine environment.

(2) The effects on sensitive ocean and coastal habitats.

(3) The effects on marine ecosystems, commercial and recreational fishing, and other important ocean uses.

(4) The effects on other plant and animal species, especially species protected or recovering under state and federal law.

(5) The effects of the use of chemical and biological products and pollutants and nutrient wastes on human health and the marine environment.

(6) The effects of interactions with marine mammals and birds.

(7) The cumulative effects of a number of similar finfish aquaculture projects on the ability of the marine environment to support ecologically significant flora and fauna.

(8) The effects of feed, fish meal, and fish oil on marine ecosystems.

(9) The effects of escaped fish on wild fish stocks and the marine environment.

(10) The design of facilities and farming practices so as to avoid ~~environmental impacts~~ adverse environmental impacts, and to minimize any unavoidable impacts.

SEC. 4. Section 15400 of the Fish and Game Code is amended to read:

1 15400. (a) Except as prohibited by Section 15007, the
2 commission may lease state water bottoms or the water column
3 to any person for aquaculture, including, but not limited to,
4 marine finfish aquaculture. ~~The~~ *Upon appropriation of funds for*
5 *that purpose, or if funds are otherwise available, the* commission
6 shall adopt regulations governing the terms of the leases. ~~No state~~
7 ~~water bottoms shall be leased, after consulting with affected~~
8 ~~stakeholders in a public process. No state leases shall be issued,~~
9 unless the commission determines that the lease is in the public
10 interest in a public hearing conducted in a fair and transparent
11 manner, with notice and comment, in accordance with
12 commission procedures. *Leases issued, and regulations adopted,*
13 *pursuant to this section shall not be construed to be fishery*
14 *management plans.*

15 (b) A person shall not engage in marine finfish aquaculture *in*
16 *ocean waters within the jurisdiction of the state* without a lease
17 from the commission. Leases and regulations adopted by the
18 commission for marine finfish aquaculture shall meet, but are not
19 limited to, all of the following standards:

20 (1) The lease site is considered appropriate for marine finfish
21 aquaculture in the programmatic environmental impact report if
22 prepared *and approved by the commission* pursuant to Section
23 15008.

24 (2) A lease shall not unreasonably interfere with fishing or
25 other uses or public trust values, *unreasonably* disrupt wildlife
26 and marine habitats, or *unreasonably* harm the ability of the
27 marine environment to support ecologically significant flora and
28 fauna. *A lease shall not have significant adverse cumulative*
29 *impacts.*

30 ~~(3) The use of fish meal and fish oil shall be minimized.~~

31 (3) *To reduce adverse effects on global ocean ecosystems, the*
32 *use of fish meal and fish oil shall be minimized. Where feasible,*
33 *alternatives to fish meal and fish oil, or fish meal and fish oil*
34 *made from seafood harvesting byproducts, shall be utilized,*
35 *taking into account factors that include, but need not be limited*
36 *to, the nutritional needs of the fish being raised and the*
37 *availability of alternative ingredients.*

38 ~~(4) Leases may be for a period of 10 years, renewable every~~
39 ~~five years at the discretion of the commission. Fees shall, at a~~
40 ~~minimum, be sufficient to pay for the costs of administering the~~

1 ~~marine finfish aquaculture program, and monitoring and~~
2 ~~enforcing the terms of the leases.~~

3 ~~(5) Fish stocks and facilities shall be monitored regularly and~~
4 ~~at least annually, and fish stocks shall be removed and facilities~~
5 ~~closed if the commission determines that the facilities or~~
6 ~~operations pose a threat to the marine environment.~~

7 ~~(6) Lessees shall provide baseline assessments of the proposed~~
8 ~~lease site to the commission prior to the issuance of the lease, and~~
9 ~~shall monitor the benthic habitat during operation of the lease in~~
10 ~~a manner determined by the commission. Lessees shall be~~
11 ~~responsible for damages to human health and the marine~~
12 ~~environment caused by their operations, and for restoring the~~
13 ~~lease site to prepermit conditions. The commission shall require~~
14 ~~financial assurances of each lessee to ensure that restoration is~~
15 ~~performed to the satisfaction of the commission. Financial~~
16 ~~assurances may take the form of surety bonds executed by an~~
17 ~~admitted surety insurer, irrevocable letters of credit, trust funds,~~
18 ~~or other forms specified by the commission as it reasonably~~
19 ~~determines is available and adequate to ensure the site is restored~~
20 ~~pursuant to this section.~~

21 *(4) Lessees shall establish best management practices,*
22 *approved by the commission, for each lease site. Approved best*
23 *management practices shall include a regular monitoring,*
24 *reporting, and site inspection program that requires at least*
25 *annual monitoring of lease sites to ensure that the operations are*
26 *in compliance with best management practices related to fish*
27 *disease, escapement, and environmental stewardship, and that*
28 *operations are meeting the requirements of this section. The*
29 *commission may remove fish stocks, close facilities, or terminate*
30 *the lease if it finds that the lessee is not in compliance with best*
31 *management practices, that the lessee's activities have damaged*
32 *or are damaging the marine environment, or that the lessee is not*
33 *in compliance with this section. The commission shall take*
34 *immediate remedial action to avoid or eliminate significant*
35 *damage, or the threat of significant damage, to the marine*
36 *environment.*

37 *(5) Before issuance of the lease, the lessee shall provide*
38 *baseline benthic habitat and community assessments of the*
39 *proposed lease site to the applicable regional water quality*
40 *control board or the State Water Resources Control Board, and*

1 shall monitor the benthic habitat and community during the
2 operation of the lease in a manner determined by the regional
3 board or the State Water Resources Control Board. The regional
4 board and the State Water Resources Control Board may
5 establish and impose reasonable permit fees to pay for the costs
6 of administering and conducting the assessment and monitoring
7 program.

8 ~~(7)–~~

9 (6) Finfish numbers and density shall be limited to what can
10 be safely raised while protecting the marine environment, as
11 specified by the terms of the lease, subject to review and
12 amendment by the commission.

13 ~~(8) Adverse interactions with marine mammals and other~~
14 ~~marine wildlife shall be prevented.~~

15 ~~(9)–~~

16 (7) The use of all drugs, chemicals, and antibiotics, and
17 amounts used and applied, shall be minimized. All
18 ~~pharmaceuticals, chemicals, and antibiotics, and the amounts~~
19 ~~used and applied, shall be~~ drugs, therapeutic substances, and
20 antibiotics shall be used and applied only as approved by the
21 United States Food and Drug Administration for marine finfish
22 aquaculture, and reported to and reviewed by the commission on
23 a regular basis. The lessee shall report that use and application
24 to the commission on a regular schedule, as determined by the
25 commission, but no less than annually, that shall be included in
26 the terms of the lease. The commission shall review those reports
27 on a regular basis and at least annually.

28 ~~(10)–~~

29 (8) The commission shall require all farmed fish to be marked,
30 tagged, or otherwise identified as belonging to the lessee in a
31 manner determined appropriate by the commission, unless the
32 commission determines that identifying farmed fish is
33 unnecessary for protecting wild fish stocks, the marine
34 environment, or other ocean uses.

35 ~~(11)–~~

36 (9) All facilities and operations shall be designed to prevent
37 the escape of farmed fish into the marine environment and to
38 withstand severe weather conditions and marine accidents. The
39 lessee shall maintain records on all escapes in a manner
40 determined by the commission. In the event of escapes, all

1 ~~escaped fish more than de minimis escapement, the number of~~
2 ~~escaped fish and the circumstances surrounding the incident~~
3 shall be reported immediately to the commission, and the lessee
4 shall be responsible for damages to the marine environment
5 caused by those escaped fish, *as determined by the commission.*

6 ~~(12)–~~

7 (10) The lessee shall, at a minimum, meet all applicable
8 requirements imposed by the State Water Resources Control
9 Board and the regional water quality control boards, and shall
10 prevent discharges to the maximum extent possible. Monitoring
11 and testing of water quality shall be required on a regular basis as
12 deemed appropriate by the State Water Resources Control Board
13 or the regional water quality control boards. All inspection and
14 monitoring reports and other records, and all data on the
15 discharge of chemical and biological pollutants shall be kept on
16 file and available for public review.

17 (c) If a restoration or enhancement plan is submitted to, and
18 approved by, the commission, and that plan, among other things,
19 provides for monitoring and protecting the benthic habitat, the
20 prevention of pollution, and the prevention of adverse impacts on
21 wild fish stocks from disease, parasites, and genetic alterations,
22 subdivision (b) shall not apply to any of the following:

23 (1) Artificial propagation, rearing, and stocking projects for
24 the purpose of recovery, restoration, or enhancement of native
25 fish stocks carried out under either of the following:

26 (A) A scientific collecting or research permit issued by the
27 department.

28 (B) The California Ocean Resources Enhancement and
29 Hatchery Program, as set forth in Article 8 (commencing with
30 Section 6590) of Chapter 5 of Part 1 of Division 6, for the
31 enhancement of white sea bass ~~implemented pursuant to a~~
32 ~~memorandum of agreement by the California Coastal~~
33 ~~Commission, the department, and the California Ocean~~
34 ~~Resources Enhancement Advisory Panel. For the purposes of this~~
35 ~~subparagraph, the memorandum of agreement related to the~~
36 ~~California Ocean Resources Enhancement and Hatchery Program~~
37 ~~meets the requirement for a restoration or enhancement plan~~
38 ~~pursuant to this subdivision.~~

39 (2) Nonprofit hatcheries and nonprofit artificial propagation
40 projects operated by, or on behalf of, licensed commercial or

1 sport fishermen and fisherwomen for the purpose of recovery,
2 restoration, or enhancement of California's native marine fish
3 populations, pursuant to Chapter 8 (commencing with Section
4 6900) of Part 1 of Division 6.

5 *(d) Nothing in this section shall be construed to limit or expand*
6 *the application of any other state law or regulation pertaining to*
7 *marine finfish aquaculture conducted within the ocean waters*
8 *under the jurisdiction of this state.*

9 *SEC. 5. Section 15405 of the Fish and Game Code is*
10 *amended to read:*

11 15405. ~~No~~ *(a) Except as specified in subdivision (b), no*
12 *initial term of a state water bottom lease shall exceed 25 years.*

13 *(b) The initial term of a state water bottom lease for marine*
14 *finfish aquaculture shall not exceed 10 years.*

15 *SEC. 6. Section 15406 of the Fish and Game Code is*
16 *amended to read:*

17 15406. (a) Each state water bottom lease shall specify a
18 period prior to expiration when renewal of the lease may be
19 requested by the lessee. If during this period the lessee is still
20 actively engaged in aquaculture, as determined by the
21 commission, the lessee shall have a prior right to renew the lease
22 on terms agreed upon between the commission and the lessee. If
23 terms are not agreed upon, the commission shall advertise for
24 bids on the lease. If a request for renewal is not made by the
25 lessee, the commission shall advertise for bids on the lease. The
26 commission shall consider bids only from aquaculturists
27 registered pursuant to Section 15101.

28 (b) Notwithstanding subdivision (a), with respect to any lease
29 of state water bottoms in effect on January 1, 1983, the lessee
30 shall have a prior right to renew the lease. If the lessee does not
31 renew the lease, the commission shall advertise for bids on the
32 lease. The commission shall consider bids only from
33 aquaculturists registered pursuant to Section 15101.

34 (c) ~~A~~ *Except as specified in subdivision (d), a lease may be*
35 *renewed for additional periods not to exceed 25 years each.*

36 *(d) A lease for marine finfish aquaculture may be renewed for*
37 *additional periods not to exceed five years each.*

38 *SEC. 7. Section 15406.5 of the Fish and Game Code is*
39 *amended to read:*

1 15406.5. ~~The~~ (a) *Except as specified in subdivision (b), the*
2 commission shall award water bottom leases to the highest
3 responsible bidder, if the bid meets or exceeds the minimum
4 annual rent established by the commission, which shall not be
5 less than two dollars (\$2) per acre, for all species cultivated,
6 unless the acreage applied for is 10 acres or less, in which case
7 the minimum acceptable rent shall be ten dollars (\$10) per acre.
8 The annual rent for any lease in effect on January 1, 1983, for the
9 cultivation of oysters shall be one dollar (\$1) per acre until the
10 expiration thereof. The commission may reject any or all bids for
11 the lease of state water bottoms if it deems the rejection to be in
12 the public interest.

13 (b) *Fees for marine finfish aquaculture leases shall, at a*
14 *minimum, be sufficient to pay for the costs of administering the*
15 *marine finfish leasing program, and for monitoring and*
16 *enforcing the terms of the leases.*

17 SEC. 8. *Section 15409 of the Fish and Game Code is*
18 *amended to read:*

19 15409. (a) Upon termination of a lease, for any reason, all
20 structures ~~will~~ *shall* be removed at the lessee's expense from the
21 leasehold, and the area shall be restored to its original condition.
22 If the lessee fails to remove the structures, the state may remove
23 them and the lessee shall pay the removal costs ~~so~~ incurred.

24 (b) *The commission shall require financial assurances of each*
25 *marine finfish aquaculture lessee to ensure that restoration is*
26 *performed to the satisfaction of the commission. Financial*
27 *assurances may take the form of surety bonds executed by an*
28 *admitted surety insurer, irrevocable letters of credit, trust funds,*
29 *or other forms of financial assurances specified by the*
30 *commission, as it determines are available and adequate to*
31 *ensure the lease site is restored pursuant to this section.*

32 (c) *Marine finfish aquaculture lessees shall be responsible for*
33 *any damages caused by their operations, as determined by the*
34 *commission, including, but not limited to, reimbursement for any*
35 *costs for natural resource damage assessment.*

36 (d) *Moneys collected by the state pursuant to subdivision (c)*
37 *or any other moneys collected pursuing violations by a lessee of*
38 *a marine finfish aquaculture lease shall be allocated in the*
39 *following order of priority:*

1 *(1) To reimburse the state for costs incurred in collecting*
2 *those moneys.*

3 *(2) To remedy damages described in subdivision (c).*

4 *(3) Remaining funds shall be deposited into the Fish and*
5 *Game Preservation Fund.*

6 *(e) Nothing in this section limits the state in pursuing*
7 *additional remedies authorized by law.*

8 ~~SEC. 5.~~

9 SEC. 9. Section 30411 of the Public Resources Code is
10 amended to read:

11 30411. (a) The Department of Fish and Game and the Fish
12 and Game Commission are the principal state agencies
13 responsible for the establishment and control of wildlife and
14 fishery management programs and the commission shall not
15 establish or impose any controls with respect thereto that
16 duplicate or exceed regulatory controls established by these
17 agencies pursuant to specific statutory requirements or
18 authorization.

19 (b) The Department of Fish and Game, in consultation with
20 the commission and the Department of Boating and Waterways,
21 may study degraded wetlands and identify those which can most
22 feasibly be restored in conjunction with development of a boating
23 facility as provided in subdivision (a) of Section 30233. Any
24 study conducted under this subdivision shall include
25 consideration of all of the following:

26 (1) Whether the wetland is so severely degraded and its natural
27 processes so substantially impaired that it is not capable of
28 recovering and maintaining a high level of biological
29 productivity without major restoration activities.

30 (2) Whether a substantial portion of the degraded wetland, but
31 in no event less than 75 percent, can be restored and maintained
32 as a highly productive wetland in conjunction with a boating
33 facilities project.

34 (3) Whether restoration of the wetland's natural values,
35 including its biological productivity and wildlife habitat features,
36 can most feasibly be achieved and maintained in conjunction
37 with a boating facility or whether there are other feasible ways to
38 achieve these values.

39 (c) The Legislature finds and declares that salt water or
40 brackish water aquaculture is a coastal-dependent use which

1 should be encouraged to augment food supplies and to further the
2 policies set forth in Chapter 4 (commencing with Section 825) of
3 Division 1. The Department of Fish and Game may identify
4 coastal sites it determines to be appropriate for aquaculture
5 facilities. If the department identifies these sites, it shall transmit
6 information identifying the sites to the commission and the
7 relevant local government agency. The commission, and where
8 appropriate, local governments, shall, consistent with the coastal
9 planning requirements of this division, provide for as many
10 coastal sites identified by the Department of Fish and Game for
11 any uses that are consistent with the policies of Chapter 3
12 (commencing with Section 30200) of this division.

13 (d) Any agency of the state owning or managing land in the
14 coastal zone for public purposes shall be an active participant in
15 the selection of suitable sites for aquaculture facilities and shall
16 make the land available for use in aquaculture when feasible and
17 consistent with other policies of this division and other
18 provisions of law.